

**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington, DC 20436**

**In the Matter of**

**CERTAIN ABRASIVE PRODUCTS MADE  
USING A PROCESS FOR POWDER  
PREFORMS, AND PRODUCTS  
CONTAINING SAME**

**Inv. No. 337-TA-449**

**NOTICE OF ISSUANCE OF LIMITED EXCLUSION ORDER  
AND CEASE AND DESIST ORDER**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order and a cease and desist order in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3041. Copies of the limited exclusion order, the cease and desist order, the public version of the Commission's opinion, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202-205-2000.

General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at <http://dockets.usitc.gov/eol/public>.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 5, 2001, based upon a complaint filed on January 5, 2001, by Minnesota Mining & Manufacturing Co. ("3M") of St. Paul, Minnesota and Ultimate Abrasive Systems, LLC ("UAS") of Atlanta, Georgia. 66 *Fed. Reg.* 9720 (Feb. 9, 2001). Their complaint named Kinik Company ("Kinik") of Taipei, Taiwan and Kinik Corporation ("Kinik Corp.") of Anaheim, California as respondents.

Complainants alleged that respondents had violated section 337 of the Tariff Act of 1930 by importing into the United States, selling for importation, and selling within the United States after importation certain abrasive products that are made using a process for making powder preforms that is covered by claims 1, 4, 5, and 8 of U.S. Letters Patent 5,620,489 (“the ‘489 patent”), owned by UAS and exclusively licensed to 3M. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337.

Complainants moved to terminate the investigation with respect to Kinik Corp. after they concluded that Kinik Corp was not manufacturing or importing products that infringed the ‘489 patent. The ALJ granted this motion on June 19, 2001, in an initial determination (“ID”) (Order No. 15) and the Commission determined not to review that ID. On August 8, 2001, the ALJ issued an ID (Order No. 19) that the economic prong of the domestic industry requirement was satisfied with respect to the claims at issue of the ‘489 patent, and the Commission determined not to review that ID.

An evidentiary hearing was held on October 10-17, 27, and 30, 2001. On February 8, 2002, the ALJ issued his final ID, in which he determined that respondent Kinik’s accused DiaGrid abrasive products infringed claims 1, 4, 5, and 8 of the ‘489 patent and that the ‘489 patent was valid and enforceable. Based upon these findings, he found a violation of section 337.

The ALJ recommended issuance of a limited exclusion order barring importation of all Kinik abrasive products that infringe the ‘489 patent, which includes products produced using Kinik’s DiaGrid process. He also recommended issuance of a cease and desist order against Kinik, and a bond during the Presidential review period in the amount of five percent of the entered value of the infringing Kinik products.

On February 21, 2002, Kinik petitioned for review of the ALJ’s final ID. Kinik also appealed Order No. 40, issued by the ALJ on October 12, 2001. That order precluded Kinik from asserting 35 U.S.C. 271(g) as a non-infringement defense. On February 28, 2002, 3M and the Commission investigative attorney (“IA”) filed oppositions to Kinik’s petition for review and its appeal of Order No. 40.

On March 29, 2002, the Commission determined to affirm Order No. 40 and not to review the ALJ’s final ID, and issued a notice to that effect. 67 *Fed. Reg.* 16116 (Apr. 4, 2002). The Commission also issued an opinion explaining its reasons for affirming Order No. 40.

Having determined that a violation of section 337 has occurred in this investigation, the Commission sought comments on and considered the issues of the appropriate form of relief, whether the public interest precludes issuance of such relief, and the bond during the 60-day Presidential review period.

The Commission determined that the appropriate remedy consists of a limited exclusion order prohibiting the importation of the infringing abrasive products manufactured abroad by Kinik Company of Taipei, Taiwan, and a cease and desist order directed to Kinik prohibiting that company from selling or engaging in various other commercial activities relating to such products within the United States. The Commission further determined that the statutory public interest factors do not preclude the issuance of such relief. Finally, the Commission determined that during the Presidential review period importation and sales within the United States should be permitted pursuant to a bond requirement in the amount of five percent of the entered value of the infringing abrasive products.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and section 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.50).

By order of the Commission.

Marilyn R. Abbott  
Secretary

Issued: May 9, 2002